IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No.5647 of 2005 (O&M)
Date of decision : 29.10.2007

M/s Berger Paints India Ltd. (Rajdoot Division)

… Petitioner

Versus

Karni Paints and Hardware Store and others

…Respondents

Present : Mr.Sanjay Judge, Advocate for the petitioner

Mr.K.K.Saini, Advocate for the respondents.

Vinod K.Sharma, J. (Oral)

This Civil Revision has been filed against the order dated 29.9.2005 passed by the learned Civil Judge (Sr.Divn.) Chandigarh vide which an application moved by the plaintiff-petitioner for leading evidence in rebuttal has been ordered to be dismissed.

The plaintiff petitioner sought to examine Mr.Pankaj Malhotra as witness to state on oath with regard to the document Exhibit D-3 which was said to have been signed by Mr.Pankaj Malhotra. The plaintiff-petitioner had filed a suit for recovery and on the pleadings of the parties, the following issues were framed by the learned trial Court:-

"i) Whether the plaintiff is entitled for the recovery of Rs.2,72,781-24 ps. alongwith cost and interest @ of 18% per annum from 21.1.2002 till the realization of the suit amount? OPP

ii) Whether the suit is not maintainable in the present form? OPD

iii) Whether the plaintiff has not come to this Court with clean hands? OPD

iv) Whether the defendant no.1 is proprietorship firm and Sanjay Jain is its sole proprietor? OPD

v) Whether there is no privity of contract between the plaintiff and defendant No.3 and 4? OPD

vi) Relief.

On issue No.1, in support of his case, the plaintiff-petitioner led evidence to prove and tendered the affidavit P/A of Shri Yogesh Bhatia PW-1 alongwith documents Exhibit P-1 to P-21. He was cross-examined on 25.9.2004 and thereafter, the evidence was closed in affirmative.

The defendant-respondents produced its evidence and examined its six witnesses and after they were cross-examined on 15.3.2005, the evidence of the defendants was closed. While leading the evidence, the defendants produced one receipt Exhibit D-3, which was said to have been signed by Mr.Pankaj Malhotra in the presence of Pardeep Mehra, wherein it was mentioned that a sum of Rs.51000/- by way of cheque, has been received against the total outstanding amount of Rs.76,000/-. The petitioner thereafter, moved for permission to call handwriting expert for verification comparison of two handwritings on Exhibit D-4, on the plea that additional lines were added in the document after obtaining the signatures of Shri Pankaj Malhotra, the Regional Manager of the Company. The said application was dismissed by the learned trial Court on 4.8.2005. The petitioner thereafter, placed on record the affidavit of Pankaj Malhotra by way of additional evidence. The leading of said application was opposed by the respondent-defendants. It was case of the plaintiff-petitioner that inadvertently, Shri Pankaj Malhotra could not be produced, in affirmative evidence and also that the receipt dated 26.4.1999 was produced by the defendant-respondents, at a later stage. Therefore, the plaintiff was entitled to lead the evidence in rebuttal.

The stand of the plaintiff-petitioner was contested by the defendant-respondents on the plea that the receipt dated 26.4.1999 was put to Yogesh Bhatia during his cross-examination on 27.4.2004 wherein he

deposed that a sum of Rs.51,000/- was received. He sought his ignorance about the signatures of Pankaj Malhotra on the receipt. The defendant thereafter, produced a handwriting expert in order to prove the signatures of Pankaj Malhotra. The handwriting expert reported that the receipt was signed by the Pakanj Malhotra. Thus, the contents of the receipt stood proved. However, in spite of this, the plaintiff chose not to produce Pankaj Malhotra in affirmative evidence. Thus, it was held that an attempt has been made to fill up lacuna in the evidence.

It is also pertinent to notice here that after the closing of evidence by the defendant, an application was moved to produce Pankaj Malhotra by way of additional evidence. The said application was dismissed on 9.4.2004. Thereafter, the application was moved for examining the handwriting expert. The Court held that the plaintiff cannot be allowed to fill up lacuna by leading additional evidence, in rebuttal. Learned Courts below, however, took lenient view and granted one more opportunity to the plaintiff-petitioner to produce evidence in rebuttal but declined the request of the plaintiff-petitioner to produce Pankaj Malhotra at a later stage. Therefore, the right of the plaintiff-petitioner to examine Pankaj Malhotra, has been wrongly declined.

The plea of the petitioner cannot be accepted. Firstly, for the reason that there is no issue, onus of which was placed on defendant qua Exhibit D-3 and therefore, the plaintiff-petitioner cannot be allowed to lead evidence on the said issue. The request for leading evidence, in rebuttal by examining Pankaj Malhotra, otherwise, cannot be said to be bona fide as on earlier occasion, two applications moved for examining handwriting and second for examining Pankaj Malhotra by way of additional evidence, stood

already declined. One specific application stood declined, it was not open to the petitioner to examine Pankaj Malhotra in rebuttal.

In view of the facts as stated above, it can safely be said that the application moved is an attempt to delay the proceedings and to fill up lacuna in the case, which cannot be permitted.

Learned trial Court therefore, justified in declining the request by the plaintiff –petitioner to examine Pankaj Malhotra in rebuttal.

Dismissed.

[Vinod K.Sharma]

Judge

29.10.2007

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